

**THIS DOCUMENT WAS SCANNED: PLEASE  
REPORT ERRORS**

CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON

PILCHUCK AUDUBON SOCIETY and  
SNOHOMISH WETLANDS ALLIANCE,

Case No.94-3-0002

Petitioners,

v.

SNOHOMISH COUNTY,

FINDING OF  
NONCOMPLIANCE

Respondent.

**PROCEDURAL HISTORY**

On January 2, 1994, Pilchuck Audubon Society and Snohomish Wetlands Alliance (the Petitioners) filed a Petition for Review with the Central Puget Sound Growth Planning<sup>1</sup> Hearings Board (the Board) alleging that Snohomish County (the County) had failed to adopt interim critical area designations and interim development regulations to protect critical areas, other than aquifer recharge areas, as required by the Growth Management Act (GMA or the Act).

On May 10, 1994, the parties presented a Stipulation and Motion for Dispositive Order (Stipulation) directing the County to designate and adopt by ordinance regulations to protect critical areas, where appropriate, and with the exception of aquifer recharge areas, not later than October 1, 1994. Attached to the Stipulation was a proposed work schedule for development of an ordinance, including adoption in September, 1994.

On May 16, 1994 the Board issued a Dispositive Order Granting Stipulated Motion (Dispositive Order). Pursuant to RCW 36.70A.300(1)(b), Section C. 2. of the Dispositive Order set September 16, 1994, as the deadline for compliance by the County with requirements of the Growth Management Act (the Act) to adopt interim designations for certain critical areas and interim development regulations to protect those areas.

On September 14, 1994 Petitioners filed a "Statement of Position" on the County's failure to comply with the Board's Dispositive Order, asking the Board to find that the County has failed to take the actions required by the Dispositive Order and to transmit its findings to the Governor, and prospectively opposing any request by the County for extension of the compliance date.

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1: Pursuant to ESSHB 2510, the name of the growth "planning" hearings boards was changed to growth "management" hearings boards, effective June 9, 1994.

On September 16, 1994, Snohomish County filed a Motion to Extend Compliance Date to November 10, 1994. A Declaration of Stephen L. Holt, Director of the Snohomish County Department of Planning and Community Development, (First Declaration) was attached to the Motion.

On September 19, 1994, the County amended its Motion correcting an error in the September 16 filing, again asking for extension of the compliance date to November 10, 1994.

On September 30, 1994, the County filed a Second Amended Motion to Extend Compliance Date, asking that the compliance date be extended to November 16, 1994. A Declaration of Stephen L. Holt in Support of Snohomish County's Second Amended Motion to Extend Compliance Date (Second Declaration) was attached.

Pursuant to WAC 242-02-890, on October 4, 1994, the Board issued a Notice of Compliance Hearing that scheduled a compliance hearing for October 10, 1994 to determine whether the County had complied with the directives of its Dispositive Order. On October 4, the County moved to reschedule the hearing to October 13, to accommodate a scheduling conflict. The Board agreed to the revised schedule.

On October 13, 1994, the Board held a compliance hearing in its Seattle office. Board members Chris Smith Towne, presiding officer, and Joseph Tovar participated in person; M. Peter Philley participated telephonically. Edward E. Level, attorney for Petitioners, Sue A. Tanner, attorney for the County, and Stephen L. Holt, Director of the Snohomish County Department of Planning and Community Development, also appeared by phone. Michelle Vincent, Robert H. Lewis Associates & Associates, recorded the proceedings.

#### FACTS BEFORE THE BOARD

RCW 36.70A.170(1)(c) requires the County to designate critical areas, where appropriate, on or before September 1, 1991.

RCW 36.70A.060(2) requires the County to adopt development regulations that protect designated critical areas on or before September 1, 1991.

When the Board finds noncompliance with the requirements of the Act, RCW 36.70A.300 directs the Board to remand the matter with instructions to comply by a date not more than 180 days from the date of the order.

Having found that the County had not complied with those requirements, the Board's Dispositive Order, dated May 16, 1994, directed the County to

... designate, where appropriate, critical areas, other than aquifer recharge areas, and to adopt by ordinance development regulations that protect such designated

areas as required by the GMA and consistent with the board's Dispositive Order in *Friends of the Law*, not later than September 16, 1994.

The decision referenced in the excerpt above dealt with the procedural requirements for use of pre-existing ordinances or regulations to meet the designation and regulation requirements.

As of September 16, 1994, the compliance deadline set in the Board's Dispositive Order, Snohomish County had not yet taken action to adopt a critical areas ordinance.

Accompanying the County's (first) Amended Motion to Extend Compliance to November 10, 1994, the First Declaration of Stephen Holt details the actions taken by the County since May 16, 1994 to comply with the directives of the Board's Dispositive Order, and its schedule for further actions leading to intended final action on November 10, 1994, as follows. A consulting firm completed preparation of a preliminary draft critical areas ordinance in August. After extensive review by County staff, the consultant submitted and the County accepted a revised draft on September 6, 1994. The Planning Commission (Commission) scheduled a public hearing for September 27, and planned to transmit its recommendation to the County Council (Council) in the first week in October. The Council was expected to hold its public hearing during the week of October 24, and to take action on the ordinance during the week of October 31, 1994.

Attached to the Second Amended Motion to Extend Compliance Date (to November 16, 1994), the Second Declaration sets forth the following assertions. The draft ordinance was available for public review on September 20, 1994. After the Commission held a hearing on the proposed ordinance on September 27, 1994, it extended the deadline for public comment to September 30, added a special meeting on October 3 for further discussion, and scheduled final action on the proposed ordinance to be taken at its regularly scheduled meeting on October 25, 1994. The Council was scheduled to receive the Commission's recommendation on October 28, 1994. In order to comply with the County's requirements for ordinance introduction and notice of hearing, the Council set its hearing on the ordinance for November 14 and 15, 1994. Finally, the Declaration asked that the compliance deadline be set for November 16, 1994.

RCW 36.70A.330(2) and W AC 242-02-890(3) require the board to issue a Finding of Compliance or Non-Compliance within forty-five days from the date a motion for compliance hearing is filed by a party or the Board itself. Since the Board entered its own motion for hearing on October 4, 1994, the forty-fifth day falls on November 24. Pursuant to W AC 242-02-060, when a deadline falls on a holiday, the deadline moves to the next working day, which is Monday, November 28, 1994.

RCW 36.70A.330(3) and WAC 242-02-890(4) require that if the Board finds that the County is not in compliance, it must transmit its finding to the Governor, and recommend that sanctions authorized by the Act be imposed.

1 In its Statement of Position, Petitioner observes that the Board's Dispositive Order dated  
2 May 16, 1994, including the compliance deadline of September 16, 1994, is final, since  
3 the County did not file a motion for reconsideration or file an appeal with the Thurston  
4 County Superior Court within the time limits for such actions specified in the Act.

5 Petitioner further calls the Board's attention to the Act's requirement for compliance with  
6 the requirements for critical areas designation and regulation not later than March 1,  
7 1992,<sup>2</sup> and details the County's actions related to critical areas since 1991 until it received  
8 the Board's Dispositive Order, and subsequent to that date.

9 At the Compliance Hearing, the County declared its intention to take final action on  
10 November 16, 1994. Had the Board granted the County the full 180 days from the  
11 Board's Dispositive Order to achieve compliance, the deadline would have been  
12 November 14, 1994. *See* RCW 36.70A.300(1)(b).

### 13 FINDING

14 Snohomish County, having failed to carry out the actions required by the Board's  
15 Dispositive Order by September 16, 1994, is not in compliance with the requirements of  
16 the Growth Management Act. The County's Motion to Extend Compliance Deadline is  
17 denied.

18 RCW 36.70A.330(3) requires that the Board transmit its finding of noncompliance to the  
19 Governor, and authorizes it to recommend to the Governor that sanctions be imposed.  
20 The Governor is authorized by RCW 36.70A.340 and .345 to impose such sanctions.

21 While the County's failure to comply with the Act's requirements to designate and  
22 regulate critical areas for the past three year~ cannot be condoned, the Board observes  
23 that the County's schedule for public input and Council consideration may result in  
24 adoption of a critical areas ordinance not later than November 16, 1994.

25 Therefore, the Board will promptly transmit its finding to the Governor, but rather than  
26 recommend that sanctions be imposed at this time, will request that such action be  
27 deferred until no sooner than November 17, 1994. If the Council has adopted an  
28 ordinance on November 16, 1994, the Board advises that no sanctions be imposed. If the  
29 Council fails to act on that date, the Board recommends that the Governor impose  
30 sanctions.

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31 2: RCW 36.70A.380 provides that the Department of Community Trade and Economic  
32 Development may extend the compliance date up to 180 days. upon the request of a  
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Civil Division  
(Dispositive Order). Pursuant to RCW 36.70A.300(1)(b), Section C. 2. of the  
2918 Colby, Suite 203  
Dispositive Order set September 16, 1994, as the deadline for compliance by the County  
Everett, WA 98201  
with requirements of the Growth Management Act (the Act) to adopt interim designations  
- Tel: (206)388-6346  
for certain critical areas and interim development regulations to protect those areas.  
Fax: (206)388-6333

On September 14, 1994 Petitioners filed a II Statement of Position II on the County's failure to comply with the Board's Dispositive Order, asking the Board to find that the County has failed to take the actions required by the Dispositive Order and to transmit its findings to the Governor, and prospectively opposing any request by the County for extension of the compliance date.

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## 94-3-0002 Finding of Noncompliance

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So ORDERED this 28th day of October, 1994.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS  
BOARD

M. Peter Philley  
Board Member

Joseph W Tovar  
Board Member

Chris Smith Towne  
Presiding Officer

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